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OFFICE OF PETITIONS

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SAN ANTONIO TX 78205-1521

In re Application of	:	
Bravomalo et al.	:	ON APPLICATION FOR
Application No. 10/684,023	:	PATENT TERM ADJUSTMENT
Filed: October 10, 2003	:	
Attorney Dkt. No. 29471.4	:	
For: SYSTEM AND METHOD FOR	:	
ASSESSMENT OF HEALTH RISKS AND	:	
VISUALIZATION OF WEIGHT LOSS	:	
AND MUSCLE GAIN	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed April 20, 2010. This application is properly treated under 37 CFR 1.705(b). Applicants request that the determination of patent term adjustment be corrected from eight hundred fifty-three (853) days to one thousand three hundred forty-two (1,342) days.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b). The fee set forth in 37 CFR 1.18(e) is required and will not be refunded.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of

issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee<sup>1</sup>.

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<sup>1</sup> For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

To the extent that applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the application for patent term adjustment is GRANTED to the extent indicated herein.

On January 20, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 853 days. The instant application for patent term adjustment was timely filed on April 20, 2010.

Applicants contend that the adjustment pursuant to 37 CFR 1.703(a)(1) should be 1056 days as the first Office action was mailed on November 1, 2007.

Applicants' argument has been considered and has been determined to be persuasive. The Office action mailed on April 12, 2007 was mailed to the incorrect address, as the change of address submitted on November 15, 2004 was not entered. Thus, the adjustment pursuant to 37 CFR 1.703(a)(1) is 1056 days. The calculation is based upon the number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 December 11, 2004 and ending on the November 1, 2007 date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is one thousand fifty-six (1,056) days

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the typed name.

Anthony Knight  
Director  
Office of Petitions

Enclosure: Copy of REVISED PALM Screen



[PTA/PTE Information](#)   
 [Patent Term Adjustment](#)   
 [Patent Term Extension](#)

Application Number\*:     
[Explanation of PTA Calculation](#)   
[Explanation of PTE Calculation](#)

### PTA Calculations for Application: 10684023

Application Filing Date	10/10/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	853
A Delays	853	PTO Manual Adjustment	203
B Delays	0	Applicant Delay (APPL)	0
C Delays	0	Total PTA (days)	1056

\* - Sorted Column

### File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
76	08/28/2010		P028	Adjustment of PTA Calculation by PTO	203		0
69	01/20/2010		MN/=.	Mail Notice of Allowance			0
68	01/16/2010		IREV	Issue Revision Completed			0
67	01/16/2010		DVER	Document Verification			0
66	01/16/2010		N/=.	Notice of Allowance Data Verification Completed			0

65	01/15/2010	CNTA	Notice of Allowability	0
64	01/02/2010	FWDX	Date Forwarded to Examiner	0
63	12/16/2009	A...	Response after Non-Final Action	0
62	09/17/2009	MCTNF	Mail Non-Final Rejection	0
61	09/14/2009	CTNF	Non-Final Rejection	0
60	08/18/2009	FWDX	Date Forwarded to Examiner	0
58	08/18/2009	FWDX	Date Forwarded to Examiner	0
56	08/18/2009	ABN9	Disposal for a RCE / CPA / R129	0
59	08/12/2009	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	0
57	08/12/2009	RCEX	Request for Continued Examination (RCE)	0
55	08/12/2009	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
54	08/12/2009	BRCE	Workflow - Request for RCE - Begin	0
53	07/16/2009	MEXIN	Mail Examiner Interview Summary (PTOL - 413)	0
52	07/13/2009	EXIN	Examiner Interview Summary Record (PTOL - 413)	0
51	05/12/2009	MCTFR	Mail Final Rejection (PTOL - 326)	0
50	05/11/2009	CTFR	Final Rejection	0
49	03/09/2009	MEXIN	Mail Examiner Interview Summary (PTOL - 413)	0
47	03/04/2009	FWDX	Date Forwarded to Examiner	0
48	03/03/2009	EXIN	Examiner Interview Summary Record (PTOL - 413)	0
46	01/28/2009	A...	Response after Non-Final Action	0
45	10/28/2008	MCTNF	Mail Non-Final Rejection	0
44	10/27/2008	CTNF	Non-Final Rejection	0
42	08/25/2008	FWDX	Date Forwarded to Examiner	0
40	08/25/2008	ABN9	Disposal for a RCE / CPA / R129	0
43	08/13/2008	IDSC	Information Disclosure Statement considered	0
41	08/13/2008	RCEX	Request for Continued Examination (RCE)	0
39	08/13/2008	WIDS	Information Disclosure Statement (IDS) Filed	0
38	08/13/2008	BRCE	Workflow - Request for RCE - Begin	0
37	05/13/2008	MCTFR	Mail Final Rejection (PTOL - 326)	0
36	05/12/2008	CTFR	Final Rejection	0
35	04/06/2008	FWDX	Date Forwarded to Examiner	0
34	03/12/2008	A...	Response after Non-Final Action	0
33	12/13/2007	MCTNF	Mail Non-Final Rejection	0
32	12/10/2007	CTNF	Non-Final Rejection	0

29	12/05/2007	FWDX	Date Forwarded to Examiner	0
28	11/30/2007	ELC.	Response to Election / Restriction Filed	0
27	11/01/2007	MNRES	Mail Notice of Restarted Response Period	0
26	10/29/2007	NRES	Letter Restarting Period for Response (i.e. Letter re: References)	0
25	10/29/2007	C.AD	Correspondence Address Change	0
24	04/12/2007	12/10/2004 MCTRS	Mail Restriction Requirement	<u>853</u> -1
23	04/10/2007	CTRS	Requirement for Restriction / Election	0
22	04/10/2007	DOCK	Case Docketed to Examiner in GAU	0
21	08/24/2006	DOCK	Case Docketed to Examiner in GAU	0
20	08/15/2006	DOCK	Case Docketed to Examiner in GAU	0
19	08/09/2006	DOCK	Case Docketed to Examiner in GAU	0
18	08/09/2006	DOCK	Case Docketed to Examiner in GAU	0
17	03/28/2006	DOCK	Case Docketed to Examiner in GAU	0
16	03/21/2006	DOCK	Case Docketed to Examiner in GAU	0
31	02/04/2005	IDSC	Information Disclosure Statement considered	0
15	02/04/2005	RCAP	Reference capture on IDS	0
14.7	02/04/2005	M844	Information Disclosure Statement (IDS) Filed	0
14	02/04/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
13	06/29/2004	DOCK	Case Docketed to Examiner in GAU	0
12	06/29/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
11	04/01/2004	WROIPE	Application Return from OIPE	0
10	04/01/2004	ROIPE	Application Return TO OIPE	0
9	04/01/2004	OIPE	Application Dispatched from OIPE	0
8	04/01/2004	COMP	Application Is Now Complete	0
7	03/15/2004	ADDFLFEE	Additional Application Filing Fees	0
6	03/15/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	01/13/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	01/06/2004	L194	Cleared by OIPE CSR	0
3	01/06/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	12/19/2003	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/10/2003	IEXX	Initial Exam Team nn	0

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